UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---X
MAX TORGOVNICK,

Plaintiff,

-against-

SOULCYCLE, INC.,

Defendant.
---X

Case No.: 17-CV-1782

COMPLAINT

Jury Trial Demanded

Plaintiff, MAX TORGOVNICK, by and through his attorneys, McLaughlin & Stern, LLP, complaining of the Defendant SOULCYCLE, INC. (hereinafter "SOULCYCLE" or "Defendant") alleges as follows:

I. PRELIMINARY STATEMENT

1. Plaintiff alleges that Defendant discriminated against him with respect to the terms and conditions of his employment based on his disability, perceived disability and/or serious health condition. As such, Plaintiff brings this action seeking monetary damages and affirmative relief based upon Defendants' violation of the Americans with Disabilities Act of 1990 (hereinafter "ADA"), 42 U.S.C. § 12101 *et seq*., the Family and Medical Leave Act (FMLA), 29 U.S.C. § 2601 *et seq*., the New York State Human Rights Law (hereinafter "NYSHRL"), N.Y. Executive Law § 296 *et seq.* (McKinney 1993 and 2001 Supp.), the New York City Human Rights Law (hereinafter "NYCHRL"), N.Y. Admin. Code 8-101, *et seq*. and other appropriate rules, regulations, statutes and ordinances.

II. JURISDICTION & VENUE

2. Jurisdiction of the Court over this controversy is based upon 42 U.S.C. § 12101 *et seq.*, 29 U.S.C. § 2601 *et seq.*, 28 U.S.C. §§ 1331 and 1337.

3. This Court has supplemental jurisdiction over all state and local law claims brought in this action pursuant to 28 U.S.C. § 1367.

4. Defendant SOULCYCLE does business in the State of New York, within the Southern District of New York, maintaining a place of business at 609 Greenwich Street, New York, New York 10014.

5. A substantial part of the events or omissions giving rise to this complaint occurred at, or around, Defendant's place of business located within New York County, New York.

6. Accordingly, this action properly lies in the Southern District of New York, pursuant to 28 U.S.C. § 1391.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

7. Plaintiff filed a timely charge of discrimination with the Equal Employment Opportunity Commission (hereinafter "EEOC") on or about June 2, 2016, under Charge No. 520-2016-02143.

8. Plaintiff brings this action within ninety (90) days of the receipt of a Notice of Right to Sue, issued by the EEOC on December 7, 2016 and received by Plaintiff on December 10, 2016. A true and accurate copy of the EEOC Dismissal and Notice of Right to Sue is attached hereto as **Exhibit "A."**

IV. THE PARTIES

9. Plaintiff is a resident of the County of New York, within the State of New York.

10. At all times relevant to the Complaint, Plaintiff was an "employee" and "eligible employee" within the meaning of the ADA, FMLA, 29 U.S.C. § 203(e), NYLL § 190(2), NYSHRL and NYCHRL.

11. At all times relevant to the Complaint, Plaintiff is and was a "qualified individual with a disability" within the meaning of the ADA, 42 U.S.C § 12111(8) and has suffered from a "disability" within the meaning of § 292(21) of NYSHRL and § 8-102(16) of NYCHRL.

12. At all times relevant to the complaint, Plaintiff is and was a "person" within the meaning of the NYSHRL and NYCHRL.

13. Upon information and belief, Defendant SOULCYCLE was and still is a foreign corporation organized and existing pursuant to the laws of the State of Delaware with authority to do business in the State of New York.

14. Upon information and belief, Defendant's principle place of business was and still is 609 Greenwich Street, New York, New York 10014.

15. Upon information and belief, Defendant SOULCYCLE was and still is a fitness company owning and operating over thirty-five (35) in-door cycle studios throughout the United States, including multiple studios in the State of New York.

16. At all times hereinafter mentioned, Defendant SOULCYCLE was and still is an "employer" within the meaning of the ADA, FMLA, NYSHRL and NYCHRL.

V. STATEMENT OF FACTS

17. On or about June 26, 2014, Defendant hired Plaintiff to work at its East 63rd Street studio location in New York City.

18. Throughout his employment, Plaintiff performed his job duties in a satisfactory manner, earning multiple pay raises and promotions during his tenure with Defendant.

19. Prior to SOULCYCLE employing Plaintiff, he was diagnosed, and had been receiving treatment for, Bi-Polar Disorder, Attention Deficit Hyperactivity Disorder (ADHD), anxiety, panic attacks and a sleep disorder.

20. These disabilities affect many of plaintiff's major life activities, including, but not limited to, his ability to sleep, concentrate and work.

21. Plaintiff continued to suffer from, and received treatment for, these medical conditions throughout his tenure with SOULCYCLE.

22. In or around January 2015, Plaintiff realized that his medical conditions were once again affecting his ability to sleep, and in turn, affecting his ability to arrive to work on time.

23. On or about January 16, 2015, Plaintiff advised one of his supervisors – known as Assistant Studio Managers (ASM) – of each of his medical conditions and how these conditions affected him and his ability to sleep and arrive to work on time.

24. On or about January 29, 2015, Plaintiff met with the Studio Manager (SM) and the same ASM from earlier in the month, to explain his medical conditions and how these conditions affected him and his work.

25. During the meeting, the SM and ASM offered Plaintiff a promotion to Key Holder/Manager on Duty. Plaintiff advised the SM and ASM that he needed to think about the offer and would get back to them the following day.

26. On or about January 30, 2015, Plaintiff advised his SM that he would accept the promotion if she would provide him with several reasonable accommodations because of his medical conditions. The requests included: (a) flexible scheduling allowing Plaintiff to have input into his schedule and limiting the number of opening and closing shifts; (b) regular one-

on-one meetings to discuss Plaintiff's progress, goals and areas of growth to focus on; and (c) in the moment feedback.

27. Later that same day, Plaintiff's SM advised him that she had made her Area Manager (AM) aware of Plaintiff's medical conditions and requests for reasonable accommodations and that SOULCYCLE agreed to provide the reasonable accommodations.

28. With these accommodations, Plaintiff continued to perform his job duties in a satisfactory matter and in or around June 2015, SOULCYCLE promoted Plaintiff again, this time to a position in its corporate office as the *East Coast Programming Coordinator*.

29. In or around July 2015, Plaintiff advised his new managers of his medical conditions and the reasonable accommodations that were provided to him while working in the studio.

30. Also in or around July 2015, Defendant's *West Coast Programming Coordinator* quit and Defendant assigned these job duties and responsibilities to Plaintiff.

31. Later in or around July 2015, one of Plaintiff's managers came to his work location and yelled at him for wearing headphones while working. Plaintiff advised him that he wears the headphones because of his ADHD and other medical conditions as they help him concentrate on his work.

32. As part of the transition to the new position, Plaintiff was to be trained by the person he was replacing; however, this training hardly took place. Plaintiff advised his direct supervisor of the lack of training and requested adequate training; however, the supervisor ignored his complaints and failed to provide him with training.

33. In or around August 2015, Plaintiff's direct supervisor and managers were removed from their respective positions and reassigned.

34. The *Director of Business Development* was assigned as Plaintiff's new supervisor and his direct report.

35. In or around August 2015, Plaintiff recognized that due in large part to the extra job duties and responsibilities and lack of adequate training, he was having a difficult time transitioning into the new role and decided that he needed to address this with his supervisor.

36. On multiple occasions, Plaintiff requested a meeting with his supervisor to address the extra job duties and responsibilities, as well as the lack of training, and other issues he was experiencing in the department; however, Plaintiff's supervisor ignored each request.

Discrimination and Retaliation

37. On or about September 23, 2015, one of Plaintiff's managers pulled him into a conference room where Plaintiff met with the manager and a Human Resources (HR) representative.

38. The manager handed Plaintiff a written warning related to his job performance.

39. Afterwards, Plaintiff met with the HR representative and advised her of his medical conditions, prior reasonable accommodations and how his written warning was likely attributed to his medical conditions – along with the lack of training. The HR representative advised Plaintiff that if he is unable to perform his job duties in a satisfactory manner, reassignment to another position was an option.

40. On or about September 28, 2015, Plaintiff met with his supervisor and manager who had written him up. Plaintiff advised them of his medical conditions in the hope that full disclosure would help them understand his situation and would result in them working together to better accommodate Plaintiff.

41. During this meeting, Plaintiff made several requests for reasonable accommodations, including: (a) permission to wear headphones (when appropriate) in order to concentrate on his work; (b) permission to take short breaks of approximately five (5) minutes every few hours; (c) permission to take a thirty (30) minute uninterrupted lunch break away from his desk (which is required under the New York Labor Law as Plaintiff worked well over 6 hours a day); and (d) one on one meetings with his manager or supervisor once every two weeks to track Plaintiff's progress and/or areas of improvement.

42. Plaintiff's manager denied each of the requests except for permission to wear his headphones when appropriate and permission to take short breaks every few hours.

43. Despite most of Plaintiff's requests being denied, Plaintiff's performance improved significantly.

44. Within a couple of weeks of meeting with the HR representative and manager, two new employees were hired and given the same job title as Plaintiff – *Programming Coordinators*.

45. Upon information and belief, the two new Programming Coordinators did not suffer from a disability nor had they requested any reasonable accommodations or medical leave.

46. The new Program Coordinators were allowed to work directly with Plaintiff's manager and received training that Plaintiff did not receive but had requested on numerous occasions.

47. On or about October 19, 2015, Plaintiff's manager assigned Plaintiff a voluminous and time-consuming project, in addition to Plaintiff's regular job duties and responsibilities.

48. The project involved coordinating every holiday vacation request from instructors at SOULCYCLE studios throughout the country.

49. Plaintiff worked every day, including nights and weekends, to finish the project on time.

50. On or about October 28, 2015, Plaintiff emailed the report to his manager as instructed.
51. Later in the day, Plaintiff's supervisor and two managers approached Plaintiff at his desk and began yelling at him, accusing Plaintiff of not communicating effectively and not getting the project finished on time.
52. Their actions caused Plaintiff to suffer humiliation, exacerbated his anxiety and caused him emotional distress.
53. On or about October 29, 2015, Plaintiff emailed the HR representative he had met with about a month before – and had continued communicating with – to discuss the harassment he experienced the day before and the ongoing harassment and discrimination he had been experience since the September 28, 2015 meeting.
54. The HR representative scheduled the meeting for the following week; however, she later rescheduled the meeting for November 12, 2015.
55. The ongoing stress and harassment Plaintiff experienced during the last few months began to exacerbate his medical conditions. On or about November 3, 2015, Plaintiff felt ill and called out sick, using one of his available sick days.
56. Plaintiff returned to work the next day. While at work, Plaintiff noticed that he was feeling strong and obvious symptoms of his medical conditions.
57. Plaintiff immediately emailed the HR representative requesting a meeting with her; however, he did not hear back from her, so he immediately contacted his psychiatrist.
58. Based on his psychiatrist's advice, Plaintiff then went directly to the HR representative's office and requested medical leave due to his documented medical conditions. Plaintiff even suggested a modified work schedule or telecommuting as potential options.

59. The HR representative then left her office and returned with Plaintiff's supervisor. They then advised Plaintiff that he was fired and that it was his last day at SOULCYCLE.

60. Plaintiff asked if he would have been fired had he not come to ask for medical leave, to which the HR representative responded that he would not have been fired.

61. Based on the foregoing, Defendant has discriminated against Plaintiff because of his disabilities or perceived disabilities.

62. Based on the foregoing, Defendant also retaliated against Plaintiff for his attempt to exercise rights protected under the FMLA.

63. Defendant's discriminatory behavior has caused Plaintiff to suffer loss of past and future earnings, benefits, caused him to suffer humiliation, embarrassment, duress and exacerbated his disabilities.

64. Defendant's discriminatory behavior displays an ignorance of the requirements of the ADA, FMLA, NYSHRL and NYCHRL, and was in reckless disregard for Plaintiff's protected rights.

FIRST, SECOND AMD THIRD CLAIMS FOR RELIEF
(Disability Discrimination –ADA, NYSHRL, and NYCHRL)

65. Plaintiff repeats and realleges each and every allegation contained herein.

66. Defendant unlawfully discriminated against Plaintiff on the basis of his disability or perceived disability in violation of the ADA, NYSHRL and NYCHRL by engaging in a course of conduct which includes failing to reasonably accommodate plaintiff, negative treatment in employment following the notification of Plaintiff's disability and/or perceived disability, and terminating his employment because of his disability or perceived disability.

67. As a proximate result of Defendant's discrimination, Plaintiff has suffered and continues

to suffer substantial loss of past and future earnings, deferred compensation, bonuses and other employment benefits.

68. As a further and proximate result of Defendant's actions, Plaintiff suffered and continues to suffer anxiety, stress and depression, severe and lasting embarrassment, humiliation, mental and physical anguish and other incidental and consequential damages and expenses.

69. Defendant's conduct was outrageous and done in conscious disregard of Plaintiff's rights. Therefore, Plaintiff is entitled to equitable and injunctive relief, an award of compensatory damages, punitive damages, expenses and attorneys' fees in an amount to be determined at trial.

FOURTH, FIFTH AND SIXTH CLAIMS FOR RELIEF
(Retaliation – FMLA, NYSHRL and NYCHRL)

70. Plaintiff repeats and realleges each and every allegation contained herein.

71. Defendant has retaliated against Plaintiff by taking an adverse employment action against Plaintiff and engaging in a course of conduct which includes negative treatment in employment, including termination of his employment, as a result of Plaintiff's attempt to exercise his rights under the FMLA.

72. Defendant has retaliated against Plaintiff by taking an adverse employment action against Plaintiff and engaging in a course of conduct which includes negative treatment in employment, including termination of his employment, as a result of Plaintiff's attempt to exercise his rights protected under NYSHRL and NYCHRL.

73. As a proximate result of Defendant's actions, Plaintiff has suffered and continued to suffer loss of past and future earnings, benefits, and have caused Plaintiff to suffer anxiety, stress, and depression, severe and lasting embarrassment, humiliation and anguish, and other incidental and consequential damages and expenses.

74. Defendant's conduct was done in conscious disregard of Plaintiff's rights. Therefore, Plaintiff is entitled to equitable and injunctive relief, an award of punitive damages, compensatory damages, expenses and attorneys' fees from Defendant in an amount to be determined at trial.

DEMAND FOR JURY TRIAL

75. Plaintiff repeats and realleges each and every allegation contained herein.

76. Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, as a result of the discriminatory conduct and actions of Defendant alleged in Plaintiff's complaint, plaintiff MAX TORGOVNICK demands judgment:

a. Declaring that the acts and practices complained of herein are in violation of the ADA, FMLA, NYSHRL and the NYCHRL;

b. Awarding Plaintiff back pay, front pay, and all benefits which would have been afforded Plaintiff but for said discrimination and retaliation;

c. Awarding Plaintiff compensatory damages and damages for mental anguish and emotional distress under ADA, NYSHRL and the NYCHRL;

d. Awarding Plaintiff reasonable attorneys' fees under the ADA, FMLA, and the NYCHRL;

e. Awarding Plaintiff punitive damages under the ADA, NYSHRL and the NYCHRL;

f. Awarding Plaintiff pre and post judgment interest on all Claims for Relief;

g. Issuing a permanent injunction enjoining Defendants, their agents, employees, officers, and successors in interest, and those acting in concert with Defendants from engaging in the illegal and unlawful customs, policies, and practices described herein;

h. Awarding Plaintiff the costs and disbursements of this action, including expert fees and disbursements; and

i. For such other relief as the Court deems just and equitable.

Date: March 9, 2017
Great Neck, New York

/s/ Jose G. Santiago
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